IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4855 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AFTAB BABUBHAI SHAIKH
Versus
COMMISSIONER OF POLICE- VADODARA AND OTHERS

==========

Appearance :
MR SATISH R PATEL for Petitioner.
MR DIPEN DESAI, AGP for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 27/08/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution for challenging order dated 10-1-2007 for his detention issued in exercise of powers under Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA"). According to the grounds of detention

supplied to the petitioner under Section 9 of PASA, he was repeatedly indulging in anti-social activity of bootlegging and a case under the Prohibition Act being III-C.R.No.689/2006 was registered against him in Panigate Poilce Station of Vadodara. It is stated in the grounds that since alcohol was injurious to health and the activity of dealing in illicit liquor was likely to cause danger to public health and the petitioner was likely to persist in that activity, the impugned order was made after being subjectively satisfied about the necessity of detaining the petitioner.

2. By filing an affidavit of the detaining authority, it is further submitted, inter alia, that an offence has been registered against the petitioner under the provisions of Bombay Prohibition Act, that liquor is injurious to health and likely to create health hazard in general public and that therefore, public order had been disturbed. It may be pertinent to note that even as the impugned order was made on 10th January 2007 and the present petition was admitted on 22nd February 2007 and the affidavit-in-reply was executed on 21st May 2007, it was submitted today at the time of final hearing of the petition and copy thereof was also supplied to the petitioner today. It was fairly conceded that co-detenue of the petitioner, who was detained by identical order on identical grounds, has been ordered to be released by this Court by order dated 22nd August 2007.

3. As held by this court in ***Amarbhai Kanjibhai Nayak v. Commissioner of Police, Ahmedabad City & Ors. [1993 (3) G.L.R. 2703]*** and in ***Sohanlal Surajaram Visnoi v. State of Gujarat [2004 (2) G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person

can be detained under the Act. It was also seen from analysis of the provisions of sub-section (4) of section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction. Even otherwise, the impugned order as well as the defence taken in the affidavit-in-reply clearly appeared to be without application of mind and can only be deprecated in view of its consequences.

4. Therefore, in the facts and circumstances, the impugned order dated 10.1.2007 of preventive detention is found and held to be unsustainable in law and set aside with the direction that the petitioner shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(D.H.Waghela, J.)

/malek